

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs. 2:10-CR-130-JAP

7 CARL EMANUEL HAESE,

8 Defendant.

9

10 Transcript of Sentencing Hearing before The Honorable
James A. Parker, Senior United States District Judge, held in
11 Las Cruces, Dona Ana County, New Mexico, commencing on
Thursday, March 22, 2012, at 4:48 p.m., and concluding at 6:41
12 p.m.

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1 (I n o p e n c o u r t .)

2 T H E C O U R T : L e t ' s t a k e u p n e x t N u m b e r 2 0 1 0 - 1 3 0 , U n i t e d
3 S t a t e s o f A m e r i c a v e r s u s C a r l E m a n u e l H a e s e . W o u l d c o u n s e l
4 s t a t e t h e i r a p p e a r a n c e s , p l e a s e .

5 M R . S A L T M A N : G o o d a f t e r n o o n , Y o u r H o n o r , M a r k S a l t m a n
6 a n d A n d r e a H a t t a n f o r t h e U n i t e d S t a t e s .

7 M R . L I L L E Y : G o o d a f t e r n o o n , J u d g e , J e s s L i l l e y o n
8 b e h a l f M r . H a e s e , w h o i s p r e s e n t .

9 T H E C O U R T : L e t m e a s k M r . H a e s e , h a v e y o u r e a d y o u r
10 P r e s e n t e n c e R e p o r t ?

11 M R . H A E S E : Y e s , s i r .

12 T H E C O U R T : H a v e y o u d i s c u s s e d i t w i t h y o u r a t t o r n e y ?

13 M R . H A E S E : Y e s , s i r .

14 T H E C O U R T : A r e a l l o f t h e s t a t e m e n t s o f f a c t i n y o u r
15 r e p o r t t r u e a n d c o r r e c t ?

16 M R . L I L L E Y : J u d g e , i f I m a y , o b v i o u s l y , w e f i l e d a n
17 e x t e n s i v e s e n t e n c i n g m e m o r a n d u m w h i c h a d d r e s s e d s o m e o f t h o s e
18 i s s u e s , a n d w e w o u l d j u s t s t a n d b y t h o s e i s s u e s .

19 A l s o , p r o b a t i o n -- w e l l , I w a s o u t o f t h e o f f i c e f r o m
20 F r i d a y t o l a s t n i g h t , a n d w h e n I g o t i n t o w n l a s t n i g h t ,
21 o b v i o u s l y , I k n e w t h e r e w o u l d p r o b a b l y b e a n o t h e r r e i s s u e o f
22 t h e P r e s e n t e n c e R e p o r t f o r s o m e f i n a n c i a l i n f o r m a t i o n . I w a s
23 a b l e t o g e t i t l a s t n i g h t a n d r e v i e w t h a t a s g o o d a s I c o u l d
24 w i t h M r . H a e s e t h i s a f t e r n o o n . M o s t o f t h e o b j e c t i o n s I h a v e
25 t o s o m e o f t h e f a c t u a l s i t u a t i o n s i n t h e P r e s e n t e n c e R e p o r t ,

1 Judge, I don't think require an evidentiary hearing. They are
2 just our version of some of the things. A lot of it was with
3 regards to one of the initial complainants, Todd Stockton, and
4 kind of revolved around an obstruction of justice which I know
5 the government has indicated that they are not going to proceed
6 with, so we would stand by all of those objections in our
7 sentencing memorandum.

8 With regard to the Presentence Report, I think there
9 were two within the last five days. I think this one was
10 disclosed on the -- I think this was -- obviously, the second
11 one is the only one we care about. This was disclosed on March
12 20th, and I do have a few comments with regards to those. Most
13 of them, Judge, are comments with regards to probation trying
14 to obtain financial information, and to be honest with you,
15 it's written in a manner which makes it look like we're hiding
16 stuff or not responding, and I don't think anything could be
17 further from the truth. I will go through some of those.

18 Before I get started on those, paragraph 68 is new, and
19 that's other criminal conduct. I would ask that to be stricken
20 from the Presentence Report. It is something that is an
21 allegation. That was the first we knew about it.

22 THE COURT: Well, let me make sure that I'm looking at
23 the same thing that you're referring to. I'm looking at a
24 Presentence Report redisclosed March 16, 2012. Is that the
25 correct one?

1 MR. LILLEY: I had one disclosed March 16th, I had one
2 disclosed March 20th. So I have March 20th.

3 THE COURT: Okay. What is the difference between March
4 20 and March 16?

5 MR. LILLEY: Well, at least in the letter that I have,
6 I have a letter, a memorandum which explains what the
7 difference is if the court would like to look at it. It is
8 dated March 20th from Mr. Rodriguez and explains that they
9 redisclosed one on the 16th, but there are some changes.

10 THE COURT: Changes to the one on the 16th?

11 MR. LILLEY: Yes. These are the changes that were
12 made, Your Honor. No major changes. It is probably not much
13 different than the one on the 16th, Judge, other than the
14 number of victims and number of victims that responded is
15 probably...

16 THE COURT: Well, this March 20 memorandum in the last
17 paragraph refers to Ms. Lesinsky's claim of loss, and that was
18 reported by the United States' Supplemental Response filed
19 March 6th where they had a victim impact -- copies of the
20 victim impact statement that showed her claim.

21 MR. LILLEY: Correct, Judge.

22 THE COURT: Do you dispute her claim?

23 MR. LILLEY: Well, I don't dispute -- we're agreeing to
24 the 164,522.53, although -- we're agreeing to that amount of
25 restitution. If I haven't seen anything with regards to

1 Ms. Lesinski's -- any documentation, I probably can't agree to
2 the amount, Judge, without seeing it first. I assume,
3 obviously, she hasn't submitted any, so that's probably an
4 amount that we would argue that should be left pending.

5 THE COURT: All right. You don't dispute that there is
6 restitution owed of \$164,522.53. Is that right?

7 MR. LILLEY: No, sir, we agree on that amount.

8 THE COURT: I guess what we can do is order that amount
9 and leave open for 90 days the effort of Ms. Lesinsky to
10 provide more information.

11 MR. LILLEY: Yes, sir.

12 THE COURT: Would that be acceptable?

13 MR. LILLEY: That's acceptable.

14 THE COURT: What other matters?

15 MR. LILLEY: Paragraph 68 is other criminal conduct,
16 and it is a report that a former employee of Mr. Haese has made
17 apparently to -- regarding some Medicaid -- probation did tell
18 me about this before I left town last week. Obviously, I saw
19 it yesterday. It is nothing we know about it. We don't know
20 anything about this. I think it's not -- I mean, we include
21 stuff that is relevant to sentencing, and I think an allegation
22 like this where we have no chance to respond other than we
23 disagree with it is not relevant for the Presentence Report,
24 shouldn't be relevant for sentencing.

25 THE COURT: Now, I had this in paragraph 68 on page 24

1 o f --

2 MR. LILLEY: Same page, Judge. I have the same thing.

3 THE COURT: This is in the one disclosed March 16th.

4 MR. LILLEY: I think it was in both of them, Judge.

5 Yes, sir.

6 THE COURT: What's the government's position on

7 paragraph 68?

8 MR. SALTMAN: May I have just a moment, Your Honor?

9 THE COURT: Yes.

10 MR. SALTMAN: Your Honor, we would object to having
11 paragraph 68 deleted from the Presentence Report. It's -- it
12 is alleged conduct, but it is alleged conduct that occurred
13 after the crime of conviction in the defendant's guilty plea in
14 this case. Of course, it is up to the court to decide how much
15 weight to give this alleged criminal conduct. There have been
16 no charges filed that I'm aware of. It is simply a police
17 report, but the government's position is that it is relevant to
18 sentencing, particularly given the defendant's crime of
19 conviction in this case, which is fraud.

20 THE COURT: What is the consequence of leaving it in
21 the Presentence Report?

22 MR. LILLEY: Well, Judge, I'm not a BOP expert, but
23 obviously, if the court were to give him time, we hope it
24 doesn't, but if the court were to give him time and he goes
25 into BOP, BOP classifies you as -- based upon everything in the

1 Presentence Report. And obviously, BOP is going to read that.
2 I don't really know. I can't represent to the court whether
3 that's going to give him a higher -- a more secure
4 classification or not, other than it shouldn't play a role
5 here. There is nothing substantiated. It is so -- I mean, if
6 we're going to rely upon a Presentence Report to include stuff
7 that's relevant for sentencing, and we're going to make an
8 allegation that's so far unsubstantiated, then it seems like
9 the Presentence Report would be fair game for any information
10 we wanted to put in there that was slanderous about anybody who
11 is making an allegation against Mr. Haese related to this case,
12 which is not really relevant.

13 MR. SALTMAN: Your Honor, may I be heard again on this
14 issue?

15 THE COURT: Go ahead.

16 MR. SALTMAN: As the court is aware, often in a
17 Presentence Report there is alleged conduct 10, 20, 30 years
18 old, that never results in a conviction, but that information,
19 if the probation officer has it, is always included in a
20 Presentence Report. The charge here, fraud, is -- it is hard
21 to imagine that it would have any effect on the defendant's
22 designation at a BOP facility because it is the same type of
23 offense for which he's been convicted of. This isn't, for
24 instance, an unsubstantiated allegation of violent crime that
25 might result in the defendant being reclassified. It is an

1 allegation of fraud, and the defendant in this case pled to
2 wire fraud. So I can't imagine -- like Mr. Lilley, I'm no BOP
3 expert, but I can't imagine that this allegation would have any
4 effect on his classification in a BOP facility. It is
5 certainly relevant information and information the court can
6 consider under 3553.

7 THE COURT: I guess there are two different issues
8 here. One is whether I take it into account in imposing
9 sentence, which I choose not to do. The other issue is whether
10 it remains in the Presentence Report regardless of that. So
11 you've got a ruling on half of it already. So where do we go
12 from here?

13 MR. LILLEY: I appreciate the first half of the ruling,
14 Judge. I don't have much more to say on the second half of the
15 ruling. I would just leave it up -- I stand by what I said.
16 I'll leave it up to the court's decision. Obviously, we object
17 to it.

18 THE COURT: I think I'll leave it in the Presentence
19 Report and not strike it, and then Mr. Haese can add whatever
20 he wants to the Presentence Report directed to it if he wishes.

21 MR. LILLEY: Yes, Judge. The only comment, I know the
22 court indicated it wouldn't take it into consideration, but
23 because the court has read it, you can't remove it from your
24 mind. I can just tell the court that this party has refused to
25 pay to satisfy an agreement -- Yvonne Machete is a former

1 employee of the people who are now refusing to make payment,
2 and intend to try to get out of this, and are creating a
3 situation so they can try to reap benefits of a \$350,000
4 contract.

5 THE COURT: Is there litigation involving this?

6 MR. LILLEY: No, there is not litigation, Judge. I'll
7 get to that. There is no litigation in that yet. Mr. Haese,
8 you can see from the financial stuff, has absolutely zero
9 finances. He's actually come to me. It is not a situation,
10 the type of law that I do. He's contacted a few attorneys.
11 When you're paying somebody \$250 an hour on this type of big
12 civil litigation, it's not money that he has at this moment.
13 Especially when, if you had the money, you wouldn't be spending
14 it on this litigation. It is an asset. Once he can be more
15 stable financially, it will be something that he proceeds with.

16 THE COURT: While we're talking about finances, let me
17 ask you about his house that he owns. It's vacant, apparently.
18 But the information that's been provided to me is that if in
19 fact it has a value of what one county tax assessor has said
20 it's worth, then he would have a significant equity in the
21 home.

22 MR. LILLEY: He would have no equity in that home,
23 Judge. We can take any county assessor value, and if somebody
24 can sell that home for \$500,000, the house next door was listed
25 at about 599 and sold for about 350. That home is not worth

1 \$500,000. If he thought he could put that on the market and
2 get a \$500,000 equity out of that home, we would do it. He has
3 vacated that home. It will go -- it will go into foreclosure
4 because he hasn't made a couple of months' payments. The bank
5 will take it over. He won't -- that house won't even be his.
6 It won't be his as soon as the bank doesn't get one or two more
7 payments and they foreclose on it. The home won't be his.

8 THE COURT: Okay.

9 MR. LILLEY: Judge, a couple of things, Judge, and I
10 hate to belittle the point, but this PSR makes it look like
11 we're doing nothing to comply with Mr. Rodriguez's request. On
12 number 85, he said he sent it to us February 1st. I have a
13 copy of the email. I received that email on February 9th. At
14 the bottom of that paragraph 85 -- basically, we submitted all
15 of this financial stuff. Then we received a new application
16 and said fill out the application.

17 Well, I never even thought to tell Mr. Haese, okay, we
18 completed this new application, now give me every, single
19 document for every single bill or everything you get in the
20 mail. I never told him to do that. You know, so we didn't --
21 so we're harped on. We didn't submit -- we didn't submit
22 bills. He doesn't have any bills. He's been moving into his
23 mom's. We did the best we could to estimate it. We moved out
24 of the house. We're moving into a home on his mom's property.
25 So the bottom of that, I didn't tell him to get any of that

1 information because really it is not available.

2 To continue, on February 24th, this is page 86 where
3 Mr. -- probation tells us that he asked us at that time to
4 verify Kim Loera's information. I got that information from
5 February 20, whenever it is. It does not have that request on
6 that.

7 When we met with probation when they toured his home,
8 probation asked Mr. Haese how much does Kim Loera make. I'm
9 there. He responded that she makes \$3200 a month. Nowhere in
10 this PSR is it reflected that we gave Mr. Rodriguez that
11 information, and yet throughout this plea agreement, it is
12 unverified. We told him it was \$3200 a month.

13 Did we get verification? No, not at the end. We
14 couldn't -- I couldn't get a pay stub. Mr. Haese was e-mailing
15 me stuff. I was trying to forward it to Mr. Rodriguez.
16 Sometimes he missed my e-mails; sometimes he did not. I know
17 he's under a lot of stress in this case because there is a lot
18 of information, and he's doing the best he could. But I would
19 send him an email. And I asked him, "Did you get it?" He said
20 no. He was having problems downloading things. I had to
21 hand-deliver him some stuff at the last minute.

22 Down page 88, no documentation. They want us to
23 provide documentation that the house is in foreclosure. I told
24 probation there is no such document. Just like when you don't
25 pay your car payment, and they just come and take your car. Is

1 there a document that you're going to show that my car is
2 repo'd? Not until it is repo'd. Same thing with the
3 foreclosure. More than once in this presentence report, we
4 didn't provide verification that this home is in foreclosure.
5 That's because they just send you a letter after first payment
6 saying you're --

7 THE COURT: I know we're quibbling over who said what,
8 but do you want some corrections made in the Presentence
9 Report?

10 MR. LILLEY: No, I don't want these corrections made.
11 I'm just saying when I read this presentence report, I was
12 losing my breath with the insinuation that we're not complying
13 with a bunch of this stuff. It goes on and on and on.

14 Page, verification of bank records on his mortgage
15 payment. I emailed that to him on March 7, 2012. He said he
16 never got it. Monthly payments of his two Chevrolet pickups.
17 I had emailed it on March 12th.

18 THE COURT: Well, I'm a little unclear, Mr. Lilley, at
19 this point, what, if anything, you want me to do.

20 MR. LILLEY: Judge, here is what I want the court to
21 recognize, that the tone of this PSR that we're not complying
22 with stuff is not accurate. I'll move on with the substantive
23 part of our sentencing hearing.

24 THE COURT: I think we need to get to what is really in
25 dispute here.

1 MR. LILLEY: Yes, sir.

2 MR. SALTMAN: Your Honor, if I may, before we move on,

3 Mr. Lilley has indicated that he has provided some of the
4 information that probation claims wasn't provided. I would ask
5 Mr. Lilley to provide that information again now. I think that
6 information is going to be important, and necessary, when the
7 court's trying to decide whether Mr. Haese, for instance, has
8 the financial ability to make a lump sum payment at this time.

9 THE COURT: I'm getting the picture that he has no
10 assets.

11 MR. LILLEY: He doesn't. There is nothing. These
12 things, the only information that we're providing is they know
13 everything. He's got two vehicles, which he has little equity
14 in. He's got no home. He pays -- he lives on his mom's
15 property now, and pays the \$700 mortgage on that which we
16 didn't provide a lease agreement between him and his mom. That
17 was twice in the Presentence Report, getting on us for not
18 providing a lease agreement for him living on his mom's
19 property. We don't have a lease agreement.

20 He's got nothing. There is this information, the only
21 information really that I could provide him is a verification
22 that his girlfriend makes about \$3200 -- brings home, I think,
23 \$3200 a week. A month, sorry.

24 THE COURT: Well, I think there was also a request for
25 documentation of what Mr. Haese is earning now.

1 MR. LILLEY: I did provide them with a letter also from
2 his employer. The information, we told probation he works for
3 an exterminator. He has not had any income since October of
4 last year because exterminators don't make money in the winter.
5 So we told probation we have had no check stubs since October,
6 so we couldn't even find a check stub.

7 We then provided probation, maybe they didn't get it
8 again, with a letter from his employer saying as of April 1st,
9 work starts again because bugs come back when it gets warm and
10 that he'll make approximately \$800 to \$1,000 a month
11 beginning -- a week, sorry, so roughly \$3400, \$3200 to \$4,000 a
12 month beginning the first week in April. I provided that to
13 probation. I assume they got it. I don't know, but it is not
14 reflected in the Presentence Report.

15 MR. RODRIGUEZ: When did you send that, Jess? Because
16 we have never received any of that. We have also never
17 received any bank records. We received copies of checks that
18 he had submitted, but when I talked to you, I spoke
19 specifically of those that we don't have bank records to verify
20 that those check copies that you provided were actually cashed
21 for the things that he's saying they were. In other words,
22 they could have just been blank checks written out. We don't
23 have any verification. I'm not going to put in the PSR what
24 his girlfriend makes if we cannot verify any of that
25 information. There is no check stubs. There is no pay stubs,

1 nothing, in reference to what she makes.

2 MR. LILLEY: Judge, I'm not going to sit here and argue
3 with probation. If we're going to tell them something, they
4 put nonverified, half the presentence reports I get say not
5 verified. We tell them she makes \$3200 and put \$3200 in there
6 and say not verified. I'm not going to go back and forth with
7 probation.

8 THE COURT: Let's get down to where the big disputes
9 are here.

10 MR. LILLEY: All right, Judge. First of all, with
11 regards to obstruction, the government has indicated that they
12 did not -- we are not going to pursue that. Obviously, if --
13 as the PSR indicates, if they wanted to pursue it, they would
14 have the burden, and they have chosen not to do that, so that
15 takes us down to level 8, Criminal History Category I.

16 THE COURT: Wait just a minute. Let's look at the
17 Presentence Report and see where we're talking about this.

18 MR. LILLEY: All right, Judge.

19 THE COURT: Is this paragraph 54?

20 MR. LILLEY: I'm trying to look for it now, Judge.
21 Yes, it is, Judge.

22 THE COURT: What is the government's position on
23 obstruction of justice?

24 MR. SALTMAN: The government is not pursuing that
25 enhancement, Your Honor.

1 THE COURT: All right. I'll eliminate the two levels
2 that were added for obstruction of justice in paragraph 54.

3 Now, what is the next dispute?

4 MR. LILLEY: The next dispute, Judge, to back up, 52 is
5 the vulnerable victim adjustment. That was an adjustment that
6 was not in the plea agreement probation identified.

7 Essentially, that's a vulnerable victim that both the
8 government and I have discussed at length, and I don't think
9 the law is in dispute, Judge, vulnerable victim, you can't
10 say --

11 THE COURT: Let me get the government's position on it
12 first. What is your position on vulnerable victim?

13 MR. SALTMAN: That enhancement should apply, Your
14 Honor. Would you like me to elaborate?

15 THE COURT: What I would like for you to elaborate on
16 is why it was not addressed in the plea agreement.

17 MR. SALTMAN: Your Honor, the plea agreement identified
18 two enhancements that would apply, but the plea agreement
19 never -- does not state that those are the only two
20 enhancements that apply. Probation -- you know, basically,
21 what we did, when we went through possible enhancements, we
22 looked at enhancements that flow from the crime of conviction,
23 that would naturally flow from that crime of conviction, and
24 vulnerable victim wasn't one that we had identified in our
25 negotiations and before we entered into the plea agreement.

1 But probation, I think, wisely included it as an enhancement in
2 the Presentence Report, and our position is that it does apply.
3 It clearly applies. And it should have been included in the
4 plea agreement. However, the fact that it wasn't, Your Honor,
5 I don't think precludes this court, certainly, from applying
6 the two-level enhancement, because again, the plea agreement
7 does not state that the stipulations that were contemplated are
8 the only stipulations that will apply.

9 THE COURT: Well, is it your position, Mr. Lille, that
10 the plea agreement precludes anything other than what was
11 explicitly mentioned in the plea agreement?

12 MR. LILLEY: Well, I wish I could say it did, Judge. I
13 mean, you know, the plea agreement is just a standard plea
14 agreement. It doesn't say -- sometimes it will say this
15 enhancement does not apply or this does apply. I don't think I
16 can honestly represent to this court any plea agreement term
17 which would prohibit probation from identifying something. I
18 don't think they are prohibited from identifying anything.

19 Obviously, you know, when we enter a plea, we have the
20 basis of the bargain, you know. We enter it thinking this is
21 what we're facing, and probation does what their job is to do,
22 and it's to identify whatever they have. I can't point to
23 anything in the plea agreement that says, well, now this is a
24 violation of the plea agreement because the government has
25 jumped on board with probation on a couple of enhancements. I

1 guess the answer to your question is no, Judge.

2 THE COURT: In going through the plea agreement, I
3 don't see anything in here that would limit the government or
4 probation to the stipulations set forth in the plea agreement.

5 This is not a Rule 11(c)(1)(C) agreement, is it?

6 MR. SALTMAN: No, Your Honor, it is a (c)(1)(B)
7 agreement.

8 THE COURT: Paragraph 5 kind of addresses the situation
9 here, I guess, which says, "Defendant understands and agrees
10 that sentencing is pursuant to the Sentencing Reform Act of
11 1984 and the United States Sentencing Guidelines which are in
12 effect advisory. The court is required to consider the
13 applicable advisory sentencing guideline range in determining
14 the appropriate sentence notwithstanding such advisory
15 guidelines. The defendant understands that no one can predict
16 with certainty what sentence the court would impose. The
17 defendant fully understands that the determination of the
18 actual sentence imposed is solely in the discretion of the
19 court." That's pretty broad language.

20 MR. LILLEY: It is, Judge. That's what I was referring
21 to when you first asked me the question.

22 THE COURT: Well, it seems to me that the government
23 and probation are not prohibited under the terms of the plea
24 agreement from arguing that two levels should be added for
25 vulnerable victim under 3A1.1(b)(1) of the guidelines.

1 Is it your position that the evidence does not support
2 that?

3 MR. LILLEY: It is, Judge. The law is clear, they need
4 to show -- you can't just say these are a group of people with
5 Lyme disease; therefore, it is vulnerable. Because especially
6 in a fraud case, fraud is by its nature deceiving or implying
7 or promising something that is not or misrepresenting a fact.
8 So the government cannot come in here and say these are all
9 Lyme disease patients and therefore vulnerable because they are
10 seeking the treatment and they want to get better and they want
11 this treatment and this was misrepresented to us. They need to
12 show that -- they have to remove themselves just from that, and
13 they have to go one step further, that this is a specific class
14 of Lyme disease patients who are extraordinarily vulnerable for
15 some specific reason, and that 22 out of the 32 Lyme disease
16 people that they contacted fall into this specific category.

17 So I don't dispute the law or what the government has
18 indicated. I just think what they said in their memorandum and
19 what they will say here today is just, hey, these people were
20 seeking treatment, they were represented that the success rate
21 is 100 percent, and never mind the release that they looked at
22 and signed; but, you know, they were preyed upon because they
23 are Lyme disease patients. All Lyme disease patients are
24 looking for a cure, I would assume, so I would argue, Judge,
25 that that did not apply.

1 THE COURT: Well, let me ask Mr. Saltman, where is the
2 evidence that supports this? I guess that's what I need to
3 ask.

4 MR. SALTMAN: Okay, Your Honor. First of all, I take
5 issue with the representation that government needs to prove
6 that all 22 people that have been identified or that have come
7 forward with compensable loss are vulnerable victims. I think
8 guidelines are pretty clear, and the case law is pretty clear,
9 that the government only need prove that one of the victims is
10 a vulnerable victim. Notwithstanding that, all of the victims
11 in this case are vulnerable, and here is why, Your Honor.

12 First of all, to understand why these particular Lyme
13 disease victims are vulnerable, you need to understand a little
14 something about Lyme disease. It is not something that people
15 in New Mexico are necessarily familiar with, because it is a
16 tick-borne illness, and these ticks basically come from deer.
17 We don't have a lot of deer here in New Mexico. It is
18 something you might see mostly in the midwest. But like I
19 said, it is a tick-borne illness, and it is transmitted from a
20 tick bite, and often, that tick bite is painless, and the
21 people that are bitten often don't know they are bitten and
22 often don't know they are infected with Lyme disease. Because
23 of that, you know, the disease festers in the body, and it goes
24 undiagnosed, and it goes untreated.

25 And the victims in this case, Your Honor, were all

1 chronic Lyme disease sufferers, people that had the disease for
2 years and years and years. And then, when they were finally
3 diagnosed, these people sought treatment but to no avail. If
4 it is detected early, it can be treated successfully with
5 antibiotics; but the victims in this case weren't able to have
6 their Lyme disease treated and cured early on, so they suffer
7 with the disease for years and years. And what that means,
8 Your Honor, is that these people suffered migraines, dizziness,
9 brain fog, poor memory, poor sleep, lack of verbal fluency,
10 confusion, disorientation, decreased ability to concentrate,
11 facial nerve ticks, paralysis, sore jaw, difficulty chewing and
12 swallowing, muscle twitches, symptoms that are consistent with
13 350 other diseases out there.

14 And these people were at their wit's end and were
15 seeking treatment for this debilitating disease, and when I say
16 "they," most of them. And if we want to put a name to their
17 faces, Cheryl Fidler, for instance, or Todd Stockton or Carol
18 Munson or Dan Munson, did their research, got on the Internet
19 and tried to find a cure for their Lyme disease, and through
20 their Internet search learned about a doctor in the Southwest
21 who purportedly had treated 3,000 people for this disease,
22 which again has no known cure outside of being treated early
23 with antibiotics, and no vaccine. But they had learned of this
24 purported doctor in southern New Mexico who had treated and
25 cured 3,000 people of this disease. So that's the kind of

1 people that contacted the defendant. And there were symptoms
2 and the fact that they had lived with this disease for years
3 and years and years and years without a cure, without hope,
4 makes them vulnerable victims under the guideline, Your Honor.

5 THE COURT: Well, where is all of the evidence
6 supporting what you have just said about people with Lyme
7 disease?

8 MR. SALTMAN: Well, Your Honor, it is contained, I
9 believe, in the government's response, and I believe at the
10 last hearing, the sentencing hearing which was continued, if
11 the court remembers, the government was going to put on
12 evidence of all of this, and Mr. Lilley agreed and stipulated
13 to the factual allegations set forth in the government's
14 sentencing memorandum.

15 THE COURT: Okay. Is that correct, Mr. Lilley?

16 MR. LILLEY: Judge, what it is is that when they filed
17 their response to my sentencing memorandum, there was a bunch
18 of attachments, about 60 or 70 pages worth of attachments.
19 What they were going to do is call the agent who conducted some
20 of those interviews, most of them in December, a month before
21 the sentencing, to testify that's what these people were going
22 to say. I did stipulate to, no, we did not need to call
23 Mr. Stockton to testify about what these people were going to
24 say, that I would stipulate that he would testify to what was
25 in essentially his reports. So, yes, I did stipulate that we

1 did not need the agent to go through all of those exhibits at
2 sentencing.

3 THE COURT: Well, help me out. Do the exhibits reflect
4 and support what Mr. Saltman just said about --

5 MR. LILLEY: Without going through every one of them,
6 Judge, they don't support his recitation of exactly what Lyme
7 disease is, and we dispute all of that, but the fact that his
8 recitation that some of these people they have identified as
9 victims were seeking treatment and they had a bunch of symptoms
10 and they researched it and located -- some of them might have
11 located Mr. Haese through the Internet, yes, Judge, I agree
12 that's some of what is presented here.

13 THE COURT: What I'm trying to look at is what shows
14 the vulnerability of the victims, and I can understand an
15 argument to the effect that people who have been infected for
16 years and have not been able to get relief from whatever
17 treatment they received may be desperate and would look at
18 anything in hopes of getting treatment. In that sense, they
19 may be vulnerable, but where is the evidence of that in the
20 record? That's what I'm asking for.

21 MR. SALTMAN: If the court would give me a minute, we
22 filed a pretty lengthy memorandum in this case, and we're going
23 through it right now.

24 THE COURT: I'm looking at page 38 of 46.

25 MR. SALTMAN: I believe the information that the

1 court's looking for, the information in the sentencing
2 memorandum that might articulate exactly why some of these
3 victims are vulnerable, is contained right where the court is
4 looking beginning on page 37 and continuing through page 46
5 where it contains a description, a brief description, of the
6 victims that we've identified, and how they came into contact
7 with the defendant and what brought them, what caused them to
8 seek out the defendant for this treatment.

9 Admittedly, the -- you know, these descriptions aren't
10 as detailed as what I'm representing Lyme disease to be, but I
11 think it is clear -- I mean, if you look at, for instance, on
12 page 38 where it references Kathleen and James Hallman, it
13 states -- I'll just read it: "Kathleen Hallman contacted
14 defendant by telephone in 2008 because she was very sick and
15 had seen a naturopathic doctor in Oregon who thought she had
16 Lyme disease. During the conversation, defendant told Hallman
17 that the defendant's father was an expert on diseases involving
18 parasites, that he had contracted Lyme disease from tick bites
19 while living in Florida, and that his father developed a
20 formula which cured him of the disease, that her family could
21 be at risk of contracting the disease because Lyme disease is
22 communicable, and that Hallman's pregnant daughter, Stephanie
23 Anderson, was at risk of contracting Lyme disease and passing
24 it on to her unborn child."

25 THE COURT: Well, these may be fraudulent statements.

1 I'm not sure how it makes Ms. Hallman vulnerable.

2 MR. SALTMAN: Well, Jennifer Schuets, November 2005,
3 diagnosed with Lyme disease by a doctor, still had the disease
4 when she contacted the defendant in 2008. I mean, these are
5 all people that have -- who were previously diagnosed with Lyme
6 disease, Your Honor, had the disease for three years, were
7 obviously still suffering from the disease, and sought out
8 treatment from a doctor. Yeah, to be cured of the disease. I
9 think that makes them vulnerable victims under the guidelines.

10 MR. RODRIGUEZ: Your Honor, if I may add something for
11 clarification, the guideline for victim, vulnerable victim,
12 basically is applied if the defendant knew or should have known
13 that the victim of the offense is a vulnerable victim. We do
14 not have a certain section that classifies all who are
15 vulnerable. It is simply if the defendant knew that the victim
16 was a vulnerable person.

17 In this particular situation, after they had attempted
18 natural medicine and received no results for Lyme cure, they
19 did their research, contacted Mr. Haese. The issue is that in
20 representing himself of the fact that he had a cure for
21 something that nobody else has, even though they didn't have a
22 cure themselves through natural medicine, made them vulnerable.
23 In other words, he knew they were vulnerable victims, or he
24 should have known. Obviously, if he had been in the business
25 of providing the services, he knew that there was no other

1 options, and by basically speaking to them as Mr. Saltman
2 stated, one of the victims claims that he said that he had a
3 cure for Lyme disease. So the application is applied because
4 of the simple fact that he knew or should have known that these
5 individuals with the Lyme disease were vulnerable victims.

6 THE COURT: Mr. Lilley, do you want to respond to that?

7 MR. LILLEY: Well, Judge, right. 3A1.1(b)(1), at the
8 very last sentence that's actually cited by the government on
9 page 16 of 46 at the end, it is not enough that the victim
10 belongs to a class generally considered vulnerable. So
11 vulnerability can't -- someone being vulnerable and then a
12 crime committed because they are vulnerable is not enough. We
13 can't just say these are a -- we're saying this is a group of
14 people who have Lyme disease and therefore they are vulnerable,
15 and then therefore they are subject to fraud because they are
16 vulnerable. That doesn't meet the standard.

17 The standard is that they have -- you can't just
18 identify a class of Lyme disease patients, and I think what the
19 court was indicating when it was asking the government about
20 some specifics to require specific vulnerability, it is not
21 there. I understand what probation says, but I think once you
22 evaluate it, interpret it, you can't just say this one patient
23 has Lyme disease and they called Mr. Haese and so therefore
24 they are vulnerable. That's exactly what's prohibited.

25 THE COURT: Well, probation is indicating a step

1 further, that he's misrepresenting things to them, but it seems
2 to me that there needs to be some evidence backing up what
3 Mr. Saltman said, and from my knowledge of persons who have
4 Lyme disease, I would have to agree with what you say, but I
5 can't consider that in my personal life.

6 MR. SALTMAN: Well, Your Honor, I don't think there is
7 any dispute that the 22 victims that we've identified are Lyme
8 disease sufferers. That fact alone makes them particularly
9 vulnerable to the defendant's false representations, because
10 he's holding himself out to be a naturopathic doctor who has
11 developed a world super protocol to cure the Lyme disease.

12 THE COURT: Which is fraudulent in your view.

13 MR. SALTMAN: Not only is it fraudulent, Your Honor,
14 but it's a fraud that is delivered to people who are
15 particularly susceptible to the fraud. It is not like he's
16 making this representation --

17 THE COURT: That's why I need to know where the
18 evidence is. What is the evidence that these are people who
19 are particularly susceptible to the fraud other than the fact
20 that they have Lyme disease and have not found a cure of it
21 yet?

22 MR. SALTMAN: Well, I would suggest to the court that
23 that's enough, that we've got 22 people who have Lyme disease
24 who have not been able to find a cure for their Lyme disease
25 and who have been suffering from the disease for years. And I

1 think the evidence of that is in the summaries of each one of
2 the 22 victims contained in the government's sentencing
3 memorandum. I understand that that's just in the sentencing
4 memorandum, but Mr. Lilley has stipulated that those factual
5 allegations are true.

6 We were prepared to put the case agent on the stand who
7 personally interviewed each one of these victims and took
8 statements from them, but counsel has agreed that the
9 government doesn't need to put that witness on the stand and
10 testify to that, so I would rest on what's contained in the
11 sentencing memorandum.

12 THE COURT: Is there something in there that says, "I,
13 patient A, was desperate, and that's the reason I went to
14 Dr. Haese"?

15 MR. SALTMAN: Yeah, I'm sure there is, Your Honor. If
16 you want to give me a couple of minutes, I could find it.

17 THE COURT: Well, this promised less-than-30-minute
18 hearing is going on and on and on.

19 MR. LILLEY: Just with regard to what Mr. Saltman --
20 he's taking my stipulation the agent would get up here and
21 testify to what those people said as I stipulated that those
22 factual allegations are true. That's a little bit -- that's
23 extending my stipulation to say somebody is going to get up and
24 say, "Here is what all of these people told me." They didn't
25 ever tell me they were going to bring in 20 people and I'm

1 going to stipulate to what those 20 people said. They said,
2 "We're going to bring in the agent. He's going to testify 'all
3 of these people told me this.'" I said, "Great, I'll stipulate
4 that the agent is going to say 'all of these people told me
5 this.'" Counsel represented to the court that I stipulated
6 that all of those factual allegations are true. That's a
7 little different.

8 THE COURT: In a hearing like this, I can accept
9 hearsay evidence, so --

10 MR. LILLEY: For the record, Judge, I wanted to clear
11 that up, that I didn't stipulate everything in there is true.
12 I stipulated that that's what the testimony would be.

13 Judge, I don't know -- I've got a couple of other
14 things. Also, I've been -- while they are looking it up, you
15 have to look at everything in context, Judge, and we haven't
16 really gotten to there is a release in this case which every
17 one of these people signed which is not this four or five page
18 release in small type. I've attached it as Exhibit 5. It
19 clearly states in plain English, not in legalese, that all of
20 this treatment, there is no guarantee, et cetera.

21 Also, at the last hearing, the court also received into
22 evidence a recorded call. Once the agent in this case got some
23 reports, they then made an undercover call posing as a Lyme
24 disease patient to Mr. Haese, and I don't know if the court has
25 had the chance to review that, but what it did is there was no

1 promise of any specific outcome. It was actually told to the
2 agent that he does treat a lot of patients and they have had
3 success, that he did treat over 3,000 patients. He did not
4 represent that he was -- he didn't say he's board certified, he
5 doesn't have any degrees that are accredited in the United
6 States, and that was an undercover call.

7 So the undercover agent who was attempting to elicit
8 some promises from Mr. Haese with Mr. Haese not knowing that
9 there is an investigation, didn't receive really any of the
10 promises that are almost depicted in every single one of the
11 representations from the people who are listed as victims,
12 seven or eight who originally, as the court can see in our
13 Exhibit 7 or 8, who had signed a letter saying, "I had
14 treatment, there was no problem with it."

15 The other thing is Mr. Haese doesn't advertise at all.
16 I think the vulnerable victim situation is if I'm advertising I
17 cure cancer or I cure Lyme disease or I cure broken legs, then
18 you're advertising, you're catering to people. That's not
19 something we have. I think those two facts also go into the
20 vulnerable victim analysis.

21 THE COURT: Mr. Saltman?

22 MR. SALTMAN: Your Honor, the government's supplemental
23 response, which is document 60, filed on March 6, 2012, Cheryl
24 Fidler, the supplemental response states that Mrs. Fidler was
25 diagnosed with Lyme disease in 2003 and sought treatment for

1 the disease but her condition did not improve. She then heard
2 about defendant and sought treatment at the Haese clinic. She
3 is part and parcel, Your Honor, of every victim in this case.
4 People that have been suffering from Lyme disease for multiple
5 years without success who have learned about somebody in the
6 Southwest that can cure it with a 100 percent success rate.
7 That's what makes Ms. Fidler and all of these 22 victims
8 vulnerable.

9 But even that said, Your Honor, I think to receive the
10 two-level enhancement here, all the government's required to
11 show is that the defendant has targeted through this fraud a
12 particular class of people who are vulnerable because of their
13 particular circumstances, and that's what we've got here, Your
14 Honor. We've got a defendant who has targeted a particular
15 class of people, people who are suffering from Lyme disease,
16 people who are vulnerable, people who are desperate for a
17 treatment, who are desperate for a cure, and that, Your Honor,
18 is why the enhancement should apply.

19 Again, if the court disagrees with that, I think the
20 government has shown through Cheryl Fidler, at least, that she
21 in particular was vulnerable, she had been suffering from the
22 disease for years who sought treatment without success, and was
23 now reaching out to somebody who could guarantee her a
24 successful treatment.

25 THE COURT: I think Ms. Fidler's July 2, 2002 letter,

1 Exhibit 14 attached to the government's supplemental response,
2 can fairly be read to mean that she was a vulnerable victim. I
3 think her situation at least was analogous to application note
4 2 regarding section B which says that the adjustment would
5 apply, for example, in a fraud case in which the defendant
6 marketed an effective cancer cure. I think it is closely
7 analogous to that, so I think that there is evidentiary support
8 from the record for that enhancement and I will approve that

9 Now, what is the next area of dispute?

10 MR. LILLEY: Judge, I'm not going to argue. I would
11 just point out Exhibit 48-7, it is a letter from Ms. Fidler who
12 indicated that she had successful treatment before the
13 litigation started in this case, and before she was contacted
14 in December of 2011, had no problems with the services that
15 Mr. Haese provided her.

16 The next is abuse of trust, Judge, and that is in -- I
17 got lost here.

18 THE COURT: That's paragraph 53.

19 MR. LILLEY: Yes, sir. Paragraph 53. I don't think
20 there is -- the same argument would be duplicating. One, they
21 need to show that there is a position of trust, and the trust
22 was used significantly to advance the scheme. As even noted in
23 the government's response, every fraud case, there is a level
24 of trust, and so again, this is not -- these people show up;
25 they are not marketed. The court cited the note about

1 marketing these people. There is -- all of this is
2 word-of-mouth. All of these people will tell you that they
3 received -- they were referred by word-of-mouth, by other
4 people who have received treatment, so there was no marketing
5 of any of these people.

6 THE COURT: I think when they contacted Dr. Haese, he
7 said that he had such a record of success, and that that in
8 effect is marketing to them in person.

9 MR. LILLEY: Well, Judge, I mean, if you look at the
10 letter that she wrote before there was litigation, before she
11 got her restitution letter, and she had no complaints
12 whatsoever about the treatment, I think the court has to
13 evaluate the basis for that. If I go to a doctor, and I'm okay
14 with the treatment, and I don't complain, and somebody contacts
15 me and says can you write a letter, and I say sure, and I write
16 a letter on his behalf, then I get a restitution letter later
17 that doesn't say anything about you receiving bad treatment and
18 then I can get \$10,000 back...

19 THE COURT: Well, Mr. Saltman, do you want to respond
20 to that?

21 MR. SALTMAN: Sure. First of all, I disagree with
22 Mr. Lilley's assertion that every fraud involves some sort of
23 abuse of trust. When somebody buys a birth certificate in
24 Juarez, Mexico, for \$10 and then shows it to an INS inspector
25 at the border, that's not an abuse of a position of trust.

1 This clearly is, Your Honor. We've got somebody that's holding
2 themselves out to be a naturopathic doctor. Not just a
3 naturopathic doctor, but no less than Carl E. Haese, NMD, ND,
4 DNM, OSJ Knight of Honor, Integrative and Orthomolecular
5 Medicine. Somebody, when you go to visit them, resides in a
6 clinic or works in a clinic with Haese Clinic of Integrative
7 Medicine written on the door, and somebody who represents to
8 the people that call them that he's codeveloped this world
9 secret protocol to treat Lyme disease patients, and he's
10 treated them with a 100 percent success rate, you know, holding
11 oneself out as a doctor even when you're not is one thing, but
12 holding yourself out as a doctor who purports to have a
13 cure-all for a debilitating disease to people who have been
14 suffering from the disease for years and years without
15 successful treatment, Your Honor, is clearly an abuse of trust,
16 and that enhancement clearly applies.

17 MR. LILLEY: The court should listen to that recording.
18 This agent calls him and purports to be a Lyme disease patient
19 and trying to elicit all of this good stuff of all of these
20 people that say this stuff after getting the restitution
21 letter, most of them, and none of this stuff is in there.
22 There is no 100 percent cure ratio in there. It is just --
23 there is not even -- it is not -- there is none of that stuff.
24 That should speak volumes in this case, what is in that
25 recorded phone call.

1 MR. SALTMAN: Is the recorded phone call in evidence?

2 MR. LILLEY: I would think you entered it last time.

3 MR. SALTMAN: I'm not clear if I entered that phone
4 call in evidence, Your Honor. I don't have it with me, but I
5 think what Mr. Lilley is referring to is a recorded phone call
6 between the case agent, Todd Blair, in an undercover capacity
7 to the defendant, and we -- perhaps we could stipulate to the
8 phone call's admission, and I could provide it to the court,
9 but I can tell the court the sort of things that Mr. Haese said
10 to the undercover agent during that phone call.

11 He talked to him about a Lyme disease protocol that
12 lasted -- that could last seven days. He told Mr. Haese -- I'm
13 sorry, Mr. Haese told the undercover agent that 45 percent of
14 the people that receive the treatment experienced a feeling
15 like being drunk or stoned, euphoric, that he treated 3,000
16 people in the last five years, that he "didn't have a failure
17 to date." That all patients have significantly benefited, that
18 most people -- that for most people, it completely turns their
19 life around, and they go back to being the people they were
20 before the disease. That he had had people come to his clinic
21 in a wheelchair and walk out after receiving the disease. That
22 his Lyme disease treatment was the specialty of the house over
23 there at the Haese Clinic. That he himself had suffered from
24 Lyme disease and he had codeveloped the Lyme disease protocol
25 with Dr. Bradford and Dr. Allen.

1 Those are the sort of representations that Mr. Haese
2 made to the undercover agent in this case contained on the call
3 that I'll move into evidence now and provide to the court after
4 the hearing, and these are the same representations that the
5 defendant made to all of the victims that he spoke to in this
6 case.

7 And, Your Honor, the defendant admitted as much, not in
8 as much detail, in the plea agreement, paragraph 7, defendant's
9 admission, where he says that he told one victim, Todd
10 Stockton, that he had a treatment protocol for Lyme disease and
11 that he had a 100 percent success rate for everybody that he
12 treated. And he admits that his representation that he had a
13 100 percent success rate where everybody he treated was false,
14 and in fact that his treatments had produced varying results.
15 So not only is it something he told to an undercover agent in a
16 recorded telephone call, not only is it something that he
17 admitted to telling Todd Stockton in his plea agreement, but it
18 is also something that he told to every one of other victims in
19 this case.

20 THE COURT: Do you have any cases that come close to
21 this?

22 MR. SALTMAN: I'm sorry, Your Honor, any case law?

23 THE COURT: Yes.

24 MR. SALTMAN: I'm sure we do, Your Honor. I would have
25 to find the cites in the government's sentencing memorandum.

1 THE COURT: What is the closest we get in the
2 application notes? There is a reference in Note 3(b) that says
3 perpetrates a fraud by representing falsely to a patient that
4 defendant is a licensed physician. What else do we have about
5 physicians and patients?

6 MR. SALTMAN: I'm not seeing anything right now
7 directly on point in the application notes, but if the court
8 will indulge me for just a moment. I know -- I believe we
9 cited several cases in support of this enhancement, Your Honor.
10 One of them is United States v. Chee.

11 THE COURT: What page are you on?

12 MR. SALTMAN: On page 18 of the government's sentencing
13 memorandum.

14 THE COURT: Well, that's pretty extreme. Sexual abuse
15 of a woman suffering seizures and partial paralysis, that's
16 mental retardation.

17 MR. SALTMAN: On page 19, Your Honor, there is a
18 parenthetical that discusses the case, and I don't know if this
19 is exactly on point either, but in that case, in the Chee case,
20 the defendant was found to have abused his position of trust as
21 a medicine man. He used "his professional discretion to
22 facilitate and conceal his offense even though he was not
23 purporting to perform a medicine man's ceremony when he
24 sexually assaulted the victim. So that was notwithstanding --
25 I don't know if -- what we have here, Your Honor, is we've got

1 somebody who not only is holding himself out as somebody that
2 he's not, somebody who has codeveloped a world secret protocol
3 for Lyme disease and successfully treated 3,000 people, but
4 we've got somebody who, because of those representations, was
5 able to induce people to come to his clinic and receive the
6 treatment.

7 MR. LILLEY: If I may, Judge.

8 THE COURT: Go ahead.

9 MR. LILLEY: Part of what Mr. Saltman didn't recite to
10 the court is actually in his memorandum on page 10, also
11 Mr. Haese tells the undercover agent he's not board certified
12 in naturopathic in New Mexico, the United States does not
13 recognize any of his degrees that he obtained. They are not
14 from any accredited schools or recognized by the AMA. That was
15 represented to the agent who was an undercover Lyme disease
16 patient.

17 MR. SALTMAN: Your Honor, if I may, I think Application
18 Note 1 is also helpful under 3B1.3 in that it defines private
19 or public trust. What it says is that "public or private trust
20 refers to a position of public or private trust characterized
21 by professional or managerial discretion, i.e., substantial
22 discretionary judgment that is ordinarily given considerable
23 deference." When you've got somebody like the defendant who is
24 holding himself out like he did and analyzing people's blood
25 under, you know, a big microscope that he calls the Bradford

1 Microscope, and telling people that they have Lyme disease, and
2 then recommending in his discretion either a five, seven- or
3 nine-day treatment at a cost in excess of \$5,000, I think you
4 clearly have got an abuse of private trust.

5 Not only that, Your Honor. I'll have to look through
6 the sentencing memorandum again, but there were also people,
7 victims, that received additional treatments. In other words,
8 they didn't just receive the initial 5-, 7- or 9-day treatment
9 because in the defendant's discretion and professional opinion
10 the initial treatments did not work, and those additional
11 victims came back for subsequent treatments at an additional
12 cost of about \$5,000.

13 So clearly, Your Honor, we've got somebody who is
14 holding himself out as an expert, who is holding himself out as
15 in fact the only person in the world who has this treatment,
16 and you've got people that are relying on that and showing
17 deference to him and to his representations in agreeing to
18 receive the treatment, and not just once, but in some cases
19 twice.

20 THE COURT: Well, what is the significance of this
21 sentence in 3B1.3 that says, "This adjustment may not be
22 employed if an abuse of trust or skill is included in the base
23 offense level"? Is it included in any way in the base offense
24 level or in the specific offense characteristic?

25 MR. RODRIGUEZ: No, Your Honor.

1 THE COURT: It is not?

2 MR. RODRIGUEZ: No, this is -- it is not included in
3 the base offense level. This was an adjustment basically of
4 the guideline by itself. Just for clarification, what is
5 different from this case, the special skill that he possessed
6 was the fact that he had a cure for Lyme disease, and he -- if
7 he uses that special skill to facilitate the offense itself, in
8 this case, he used his special skill of the cure for Lyme
9 disease to fraudulently obtain services for these individuals,
10 and that's why this was applied.

11 THE COURT: Okay. What's your response to that,
12 Mr. Lilley?

13 MR. LILLEY: Judge, my response to that is in U.S. v.
14 Koehn 74 F.3d 199, Tenth Circuit, every fraud case, there is
15 trust, so do these people -- I mean, when you go to a doctor,
16 just -- let's narrow it down to common sense. When you go to a
17 doctor, you have trust in --

18 THE COURT: What about the representation that he had a
19 special skill to treat and cure Lyme disease?

20 MR. LILLEY: I don't know. Not all of these people say
21 he had special -- that he could cure Lyme disease. I know some
22 of them after the fact said initially -- again, we're talking a
23 bunch of people who wrote these letters saying "we have no
24 problem." Now they have a problem. Let's just say, and we
25 don't agree that he ever told anybody he had a cure, but we

1 admitted to and what's in his acceptance statement is he
2 represented that I have a "100 percent success rate." We
3 never -- we didn't say we have a cure. A 100 percent success
4 rate is like he told Todd Stockton, everybody here has
5 sufficient -- everybody here has a significant benefit.

6 THE COURT: Do you admit that he told the patients that
7 he had a special ability to treat their Lyme disease?

8 MR. LILLEY: He -- the patients would ask him, he would
9 tell them about the Bradford Microscope. Now, when you ask
10 these patients two years later or three years later, okay,
11 yeah, he represented he had a microscope. It's not something
12 he developed. This is something that his father used for
13 several years, multiple years.

14 THE COURT: Well, did he represent in some fashion that
15 this was a special skill that he had with this particular
16 microscope to treat Lyme disease?

17 MR. LILLEY: I don't think so, Judge.

18 THE COURT: What is your position on that, Mr. Saltman?

19 MR. LILLEY: I didn't stipulate to that.

20 THE COURT: Well --

21 MR. SALTMAN: That he analyzed all of these victims's
22 blood under this machine that he called the Bradford
23 Microscope, and that after he analyzed their blood, he said,
24 "You've got Lyme disease, and you need a 5, a 7 or a 9-day
25 treatment and here is how much it costs. And what do you want

1 to do?" So the government's position is that he used the
2 Bradford Microscope as a tool. It purportedly diagnosed or
3 confirmed previous diagnoses of Lyme disease.

4 But again, Your Honor, that isn't necessarily the abuse
5 of trust that I'm talking about today. What I'm talking about
6 is the defendant's representations that he had the secret, I
7 mean, he was keeper of the secret, he wasn't going to share it,
8 and if they -- if somebody wanted to be cured of Lyme disease
9 forever and return to their normal lives before they contracted
10 the disease, he was the guy that could do it.

11 THE COURT: Is there evidence that he said that in the
12 record?

13 MR. SALTMAN: Well, Your Honor, he admitted it in his
14 plea agreement when he told Todd Stockton that he had a
15 treatment protocol for Lyme disease and that he had a 100
16 percent success rate for everybody he treated, and that's not
17 true, and he admits that that's not true.

18 MR. RODRIGUEZ: That's the only thing I was going to
19 add, Your Honor. It is in his acceptance of responsibility
20 that he stated that had 100 percent to Mr. Stockton.

21 THE COURT: Well, 3B1.3 is in the disjunctive. It
22 says, "If the defendant abused a position of private trust or
23 used a special skill in a manner that significantly facilitated
24 the commission or concealment of the offense, increase by two
25 levels." I think there is adequate evidentiary support on

1 either side of that "or" that he abused the private trust as a
2 physician and used a special skill in convincing patients that
3 his microscope and other forms of diagnosis and treatment would
4 likely result in their cure from Lyme disease. So I will
5 approve the two level enhancement for 3B1.3.

6 Where are we now?

7 MR. LILLEY: Judge, I think that's the only -- I just
8 have my sentencing argument. I think that's the only.

9 THE COURT: Well, let's take a look at the Presentence
10 Report on page 21, the adjusted offense level now becomes 21
11 instead of 23. Is that correct?

12 MR. LILLEY: It goes from down from 20 to 18 is where
13 it goes. That 20 already included all the adjustment, and it
14 included the obstruction adjustment which the --

15 THE COURT: I'm talking about paragraph 55, the
16 adjusted offense level.

17 MR. LILLEY: Right. Oh, I'm sorry, Judge, that would
18 be 21.

19 THE COURT: 21?

20 MR. LILLEY: Yes, sir.

21 THE COURT: Okay. Then three levels are subtracted for
22 acceptance, and so the total offense level becomes 18. Is that
23 correct?

24 MR. LILLEY: Based upon the court's ruling, yes, sir.

25 THE COURT: Are you in agreement that the Criminal

1 History Category is I?

2 MR. LILLEY: Yes, sir.

3 THE COURT: Do you agree that the guideline

4 imprisonment range then is 27 to 33 months?

5 MR. LILLEY: Yes, I do, based upon the court's ruling.

6 THE COURT: It would be my intent to impose a sentence

7 at the bottom of the guideline range.

8 Go ahead, Mr. Lilley, if you would like to make a

9 statement.

10 MR. LILLEY: Judge, this is -- I'm not going to try to
11 rehash anything that I've already said. This is not something
12 he developed. This is not some treatment that he started.
13 This is a treatment that his father had been doing for many,
14 many years, and that was working. His father passed away in
15 2008. He continued this treatment. Did he improperly
16 represent that he had 100 percent, not a cure rate, 100 percent
17 success rate with every person? That's what we pled to, and
18 that's what he regrets doing.

19 Since this is a treatment that he underwent himself, we
20 had another physician, Dr. Haire, who was actually at the
21 facility, actually -- I enclosed all of the records in my
22 exhibit, treated and ordered the treatment for many of these
23 people. He doesn't advertise. He tells anybody who would
24 call, and I think that's also in the recording to the
25 undercover agent, anybody that would call, "I can give you

1 people's names." This is by word-of-mouth.

2 Really from the very outset, this isn't just a
3 treatment that he's given people and he's sucking people in, he
4 would be advertising. And if people were not satisfied, and
5 they were coming back to him and saying, "I'm not satisfied,
6 I'm not satisfied," if all of them weren't satisfied, he
7 wouldn't be giving people's names out.

8 Obviously, this does provide a benefit to a lot of
9 people. There was 22 people. 32 responded, 10 people didn't
10 respond, and about nine of those people who responded had
11 written a letter saying there were no problems.

12 He has since sold the business. That was his choice.
13 Obviously, his financial situation has gone downhill. He lives
14 very modestly in a home, and which probation saw, he just moved
15 into on his mother's property. I mean, obviously, we have had
16 to -- we've agreed to the restitution amount.

17 Because we don't have a lot of money, we couldn't come
18 in here and say here is 50,000, here is 100,000. We don't have
19 the money. We're just going to default on a loan if we
20 borrowed the money. He's agreed to pay the money back. He
21 will pay the money back.

22 THE COURT: How is he going to pay the money back?

23 MR. LILLEY: Well, here is the situation, Judge. If
24 you don't put him in jail, and you put him on probation, or you
25 put him in a halfway house, one, he's going to continue to

1 work. He's got a job right now that's going to make \$4,000 a
2 month. If he's not in custody, then he can take a loan out on
3 some property. You don't want to take a loan out on property
4 if you know you're going to have to default. So there is a lot
5 of situations. The property that he lives on now --

6 THE COURT: That's his mother's property.

7 MR. LILLEY: It is not his mother's property.

8 THE COURT: Whose is it?

9 MR. LILLEY: It is his mother's property. It is not
10 his property, correct, but it is a whole lot easier to take a
11 loan out or to pay off a loan if you're not going to default
12 right away.

13 What I'm getting at, Judge, if he serves any
14 significant incarceration at all, his ability to pay is going
15 to go downhill drastically. One, obviously, when you do time
16 and you become a felon, the job market closes very quickly on
17 you.

18 THE COURT: What asset does he have where he can even
19 consider getting a loan?

20 MR. LILLEY: He's got his mother's property. What he
21 didn't --

22 THE COURT: You mean his mother is going to put up her
23 property for a loan to him?

24 MR. LILLEY: Absolutely, Judge. Absolutely. We just
25 didn't want to come in here and put up this property right now

1 and come in with a \$75,000 loan, and then the court
2 incarcerates him, and then they default on that loan because
3 they can't pay it. His mom is on a fixed income. So, yes, I
4 think we would. He's going to have to pay it one way or the
5 other. I mean, the court's going to order it. We agreed upon
6 it. Is it going to get paid? The chances of it getting paid
7 are --

8 THE COURT: Well, this is the first I've heard the
9 mother would put up her property in order to get it paid.

10 MR. LILLEY: That's what I represented to the court the
11 last time, that we were looking at some property to put up. I
12 didn't specifically refer to it as the mother's property. When
13 we sat down and discussed it with Mr. Haese, it didn't make
14 financial sense to borrow a bunch of money on the property in
15 advance and then go to prison and then have that loan
16 foreclosed on.

17 THE COURT: Let me state on the record, I don't think I
18 have done this yet, that based on the information that
19 Mr. Haese provided at his change of plea hearing and the
20 information in his Presentence Report, it is my finding that
21 the defendant, Carl Emanuel Haese, knowingly, voluntarily and
22 intelligently, entered a plea of guilty to the charge in
23 Information 2010-130, and at this time, I will accept both his
24 plea agreement and his plea of guilty.

25 Let me ask Mr. Haese, is there anything you would like

1 to say at this time, sir?

2 MR. HAESE: Yes, Your Honor. One, I would like to
3 apologize to the court, and I would apologize to Mr. Todd
4 Stockton in this case for misrepresenting the success rate that
5 I have, but I would like to stand adamant in saying that I feel
6 the prosecution has painted a very large, misrepresented --
7 misrepresented picture of me. I have never in my lifetime
8 promised or guaranteed a cure for a disease. I said that I had
9 a 100 percent success rate. Every patient that came through
10 the office expressed to me and to the other staff members that
11 they had a significant improvement in their health and in how
12 they felt, even in the audio recording from the agent, I was
13 adamant in that phone call that there is no cure for this
14 disease.

15 I did not intentionally defraud people by telling them
16 that I could cure them and that I was the only person that ever
17 had this information as prosecution represented. This
18 treatment that I offered them was nationally published in the
19 Townsend letter. This treatment protocol was invented by
20 Dr. Bradford, and my father assisted, and I assisted in the
21 formulation of putting it all together.

22 I have never offered anyone a cure, Your Honor. I
23 offered them -- what I told them is that I had a 100 percent
24 success rate, which was an embellishment on the truth because
25 they were varying results, but I did not offer anyone a cure.

1 THE COURT: From what you're telling me, I'm not sure
2 that you stated an adequate factual basis for a plea of guilty
3 to this offense.

4 What's your position, Mr. Saltman?

5 MR. SALTMAN: Well, I think he has, Your Honor. He's
6 admitted again before Your Honor that his representation to
7 Mr. Stockton that he had --

8 THE COURT: He said he didn't ever tell him that he had
9 100 percent cure rate, but instead that he had a 100 percent
10 success in treatment, which can get into a gray area.

11 MR. LILLEY: I think that's what he said here today,
12 Judge. What was accepted is the language in the plea. We
13 agree it was sufficient to establish the plea that that was the
14 representation to Stockton which then induced --

15 THE COURT: What else did you want to argue,
16 Mr. Lilley?

17 MR. LILLEY: Judge, I don't have a whole lot further
18 other than just incarceration. I don't want to go through
19 3553. The court knows those and analyzes those in its head.

20 I would ask court to put him on an electronic monitor.
21 If the court feels incarceration is needed, a short period of
22 incarceration. He's going to do what is needed. That's it.

23 THE COURT: Mr. Saltman?

24 MR. SALTMAN: Your Honor, it is not often that I
25 personally ask the court to sentence a defendant at the high

1 end of the guideline range, but I'm going to ask the court to
2 do it today with regard to Mr. Haese. I think a 33-month
3 sentence in this case is reasonable, Your Honor. The court
4 knows the facts, and, you know, I've discussed already today
5 some of the more egregious conduct.

6 But I want to take issue with just a couple of things
7 that Mr. Lilley said. Namely that, you know, that some of
8 these patients benefited from the treatment. To what extent
9 anybody benefited from this treatment, I'm not aware, but what
10 I am aware of is that there are people that received this
11 treatment that experienced terrible side effects from it, and I
12 think that's because the defendant is not a licensed medical
13 doctor. His father was, but when his father died, the
14 defendant decided to step into his shoes and conduct himself
15 like a doctor, like a licensed medical doctor who knew what he
16 was doing when he was prescribing drugs.

17 For instance, Your Honor, on page 42 of the sentencing
18 memorandum, it talks about Richard and Donna LaBrenze and their
19 experience from the treatment, and what it says is that -- and
20 this is what they told the case agent, that they both became
21 extremely sick from the treatment and considered going to the
22 hospital. Ms. LaBrenze experienced severe vomiting, diarrhea
23 and was reduced to crawling to reach the hotel bathroom, and
24 she was bedridden for approximately 20 hours after receiving
25 one of the defendant's intravenous treatments. They contacted

1 the defendant to seek further medical treatment, find out what
2 was going on. In fact, Mr. LaBrenze contacted the defendant
3 and asked for his money back, and the defendant told him that
4 he had beaten the federal charges and that he was only charged
5 with mail fraud which was no big deal.

6 Some of the other victims, Your Honor, were told after
7 they received the treatment, "Call me in three months, tell me
8 if the treatment worked." That's the sort of follow-up care
9 that these patients received. And when they didn't get better
10 or they got worse, the defendant didn't do anything about it
11 because he couldn't do anything about it, because he wasn't who
12 he held himself out to be, which is somebody that had
13 personally treated 3,000 people with a 100 percent success
14 rate.

15 In fact, he was somebody that didn't develop this
16 treatment protocol at all, who had treated people with it, but
17 according to what he told agents at the time of the search
18 warrant on the Haese Clinic, less than 20. He was not
19 experienced in administering the treatment. He wasn't
20 experienced in follow-up care. He didn't know what to do when
21 his victims suffered extreme side effects, and notwithstanding,
22 Your Honor, he continued to perform the treatment in excess of
23 \$5,000 a pop.

24 We don't know where that money went, Your Honor. But I
25 think the court can guess. He's got a home that's valued at

1 least by the county assessor at over \$500,000. He's got or had
2 two H2 Hummers which are pretty expensive vehicles.

3 THE COURT: Is there any equity in any of that?

4 MR. SALTMAN: Not the Hummers, Your Honor, because he
5 traded them in for two, I believe, brand new Chevy Silverado
6 350 trucks. He's got another vehicle. \$90,000 worth of
7 vehicles parked in a driveway somewhere. He's got a \$500,000
8 home he's walked away from, and --

9 THE COURT: From what he said earlier, he couldn't sell
10 it for \$500,000, he would sell it for considerably less than
11 \$500,000.

12 MR. SALTMAN: In this market, it's probably true. He
13 probably couldn't sell it for \$500,000. But at one point,
14 his -- nobody's home around here is worth what it once was, but
15 at one point, this home was valued at \$500,000.

16 He's got expensive vehicles in his driveway, and he
17 stands before you today and tells you that if you keep him out
18 of jail he'll make these victims whole. Well, if he wanted to
19 make these victims whole, he could do it regardless of whether
20 the court sentenced him to prison or not. He could take out a
21 loan on his mother's property, and he could pay back these
22 victims.

23 But what I'm hearing is that the defendant is trying to
24 buy his way out of jail right now. He's telling the court
25 effectively, "If you keep me out of jail, I'm going to take out

1 a loan on my mother's property, and I'm going to make these
2 victims whole. If you send me to jail, none of these victims
3 are going to get paid."

4 The defendant stands here today and apologizes for the
5 representations he made to Todd Stockton, but he doesn't say
6 anything about the other 21 victims that he defrauded of \$5,000
7 in some cases, and 17,000 in other cases. Instead, he asks the
8 court to sentence him to, I believe it was, a term of
9 probation, I may be wrong, and to allow him to pursue the
10 possibility of obtaining a loan on property that he doesn't own
11 to make these victims whole.

12 Clearly, Your Honor, the defendant in my estimation is
13 not remorseful for what he's done. He's had a good time with
14 the money he's gained by virtue of his fraud and has no intent
15 to make the victims whole any time soon. For those reasons,
16 Your Honor, I think a sentence of 33 months, which is the high
17 end in this case, is reasonable, and I would ask the court to
18 impose it.

19 THE COURT: Let me ask probation, you had recommended a
20 33-month sentence at the bottom of the guideline range on the
21 prior range of 33 to 41 months. The range now is 27 to 33
22 months. What is your recommendation at this point?

23 MR. RODRIGUEZ: Your Honor, the court has full
24 discretion. Our recommendation would still be the bottom of
25 the guideline.

1 THE COURT: Bottom of the guideline range?

2 Let me state for the record that in preparation for the
3 sentencing, I read the defendant's sentencing memorandum filed
4 November 2, 2011, document number 48; the United States'
5 response, document number 55, filed January 4, 2012; the United
6 States' supplemental response filed March 6, docket number 60;
7 a letter from Harry Wiley dated -- well, it is undated; a
8 letter dated March 21, 2012, from Ruben Sanchez; a letter dated
9 March 21, 2012, from Robert S. Loera; a letter undated from
10 Phil Elie; a letter dated March of 2012 from Kenny Wiley.

11 Are there any other written materials that I should
12 have considered?

13 MR. LILLEY: Not that I'm aware of, Judge.

14 THE COURT: Okay. Let me state a proposed sentence and
15 you may comment on this.

16 I have reviewed the Presentence Report, and I have
17 considered the sentencing guideline applications and the
18 factors under 18 United States Code Section 3553(a). It is the
19 judgment of the court as to Information 2010-130 that the
20 defendant, Carl Emanuel Haese, is committed to the custody of
21 the Bureau of Prisons to be imprisoned for a term of 27 months.

22 Let me ask if you request a recommendation of a
23 particular FCI?

24 MR. LILLEY: Judge, he's got significant medical
25 problems, and so he's going to need to go to a medical

1 facility.

2 THE COURT: What is the closest Federal Medical Center?

3 Is there still one in Fort Worth, or has that changed?

4 MS. GUTIERREZ: I believe so, Your Honor. Give me just
5 a minute.

6 THE COURT: Yes, there is a medical center in Fort
7 Worth.

8 MR. LILLEY: If that's the closest place, Judge.

9 MR. RODRIGUEZ: Yes, Your Honor.

10 THE COURT: I'll recommend that the defendant serve his
11 sentence in the Federal Medical Center Fort Worth, Texas, if he
12 is eligible.

13 The defendant is placed on supervised release for a
14 term of three years. He must comply with the standard
15 conditions of supervised release and the mandatory conditions
16 that he not possess firearms, ammunition, explosive devices or
17 other dangerous weapons, and that he cooperate in the
18 collection of DNA as directed by statute.

19 The following special conditions are also imposed:

20 First, the defendant must submit to a search of his
21 person, property or automobile to be conducted in a reasonable
22 manner and at a reasonable time for the purpose of detecting
23 contraband, illegal narcotics, firearms and dangerous weapons.
24 He must inform others living with him that the premises are
25 subject to a search.

1 Second, the defendant is prohibited from incurring new
2 credit charges or opening additional lines of credit without
3 prior approval of the probation officer.

4 Third, the defendant must provide the probation officer
5 access to requested financial information, copies of his
6 personal income tax returns, an authorization for release of
7 credit information, and other business information in regard to
8 which defendant has an interest.

9 Fourth, the defendant must not have any direct or
10 indirect contact or communication with any of the victims or go
11 near or enter the premises where the victims are located except
12 under circumstances approved in advance in writing by the
13 probation officer.

14 In accordance with the Mandatory Victim Restitution
15 Act, it is further ordered that the defendant make restitution
16 to all of the victims listed in the judgment, and that combined
17 total is \$164,522.53. It does not include the claim of Karen
18 Lesinsky in the amount of \$5,700. If additional restitution is
19 requested, I will hold a hearing on restitution within 90 days
20 after the date of sentencing.

21 The defendant must pay one half of this amount, which
22 is \$82,261.27 in a lump sum payment prior to commencement of
23 his sentence of imprisonment. The remaining half will be paid
24 in monthly installments of \$2,285.03 over a period of 36 months
25 during his term of supervised release.

1 Let me ask about the fine. Was that agreed to in the
2 plea agreement?

3 MR. SALTMAN: It was, Your Honor.

4 THE COURT: In addition, the defendant must pay a fine
5 of \$10,000. That sum is to paid in monthly installments of
6 \$277.77 during defendant's 36-month term of supervised release.
7 Collection of the fine will commence after the outstanding
8 restitution amount has been paid in full.

9 I will order that interest and penalties be waived on
10 both the restitution and the fine.

11 The defendant must pay a special assessment of \$100,
12 which is due immediately.

13 I find that the defendant presently is neither a flight
14 risk nor a danger to the community; therefore, voluntary
15 surrender will be permitted. The defendant must report to the
16 United States Marshals Service following this hearing and
17 arrange for self-surrender to the designated facility or the
18 the Marshals Service within 60 days from this date, or as
19 otherwise notified by the Marshals Service.

20 Under the terms of his plea agreement, Mr. Haese has
21 waived his right to appeal this proposed sentence.

22 Mr. Saltman, do you have any comments on that proposed
23 sentence?

24 MR. SALTMAN: A few, Your Honor. Just for point of
25 clarification, does the amount of restitution that this court

1 is ordering include prejudgment interest as required by the
2 Mandatory Victim Restitution Act?

3 THE COURT: This is the first I've heard of prejudgment
4 interest.

5 MR. SALTMAN: I believe, Your Honor, it is required
6 pursuant to the act.

7 THE COURT: I confess that I've never read that
8 provision before, so I need some guidance from probation or
9 from the lawyers.

10 MR. LILLEY: Judge, I haven't looked at that recently,
11 so I really can't argue against it or can't argue in agreement
12 of it.

13 THE COURT: Well, where does it appear in the statute?

14 MR. SALTMAN: 3663, but I'll find that part of the
15 statute, Your Honor. In fact, Your Honor, I apologize, I
16 thought I brought my code book, but I didn't.

17 THE COURT: You're saying prejudgment interest is
18 mandatory?

19 MR. SALTMAN: I believe so, Your Honor. We looked at
20 that issue and actually --

21 THE COURT: From what date or dates?

22 MR. SALTMAN: I'm sorry, Your Honor?

23 THE COURT: Is it from the date of entering the plea,
24 the date of each service or payment of services? When do you
25 start calculating it?

1 MR. SALTMAN: You know what, Your Honor, I'm not
2 entirely clear, and with the court's permission, I would like
3 to submit --

4 THE COURT: Well, if it is not mandatory, I'm not going
5 to order it. You've represented the statute requires me to
6 order it, I guess, but I'm not familiar with that provision.

7 MR. SALTMAN: All right. We'll try to find it here in
8 a minute, Your Honor.

9 THE COURT: Okay. Well, here you've got a multitude of
10 victims. I have not the slightest idea how you would go about
11 calculating prejudgment interest if it is from the date that
12 they paid the amounts fraudulently, each of them separately, or
13 it is from the date he entered the plea of guilty or the date
14 of conviction or when it starts.

15 MR. SALTMAN: I think I know when it ends, the date
16 that the judgment is issued, but, Your Honor, I don't know at
17 what point the court would begin to calculate the prejudgment
18 interest. I can try to find that and provide that to the
19 court. If not, if the government can't find it in answer to
20 that, the government won't ask for it.

21 THE COURT: I know that I do have discretion to waive
22 postjudgment interest and penalties, and I just stated on the
23 record that I'm waiving that.

24 MR. SALTMAN: Yes, Your Honor. We're not seeking
25 postjudgment interest.

1 MR. LILLEY: I agree with Mr. Saltman. I don't know
2 enough about the situation or that interest to -- I would just
3 ask the court to -- I guess they would have leave to come back
4 to the court and submit something to determine exactly whether
5 it is mandatory, and if so, when does it start and how we would
6 go about calculating that.

7 THE COURT: Do you have any information?

8 MR. RODRIGUEZ: Your Honor, I do not. The question is
9 whether or not this is mandatory. I can honestly say that I
10 don't think I have ever submitted any prejudgment interest on
11 any case, and therefore, we're not familiar with whether or not
12 it is mandatory or not. Certainly, the amounts that you have
13 before you do not include anything like that.

14 THE COURT: Well, I'm simply not familiar with the
15 statute that requires imposition of prejudgment interest, so
16 I'll need to get guidance on this right away because we need to
17 enter a judgment soon.

18 MR. SALTMAN: Yes, sir.

19 THE COURT: Can you get --

20 MR. SALTMAN: We'll try to have an answer for the court
21 before we leave the courtroom, Your Honor.

22 THE COURT: I'll be here tomorrow, so you can tell me
23 tomorrow.

24 MR. SALTMAN: All right.

25 THE COURT: I'll be leaving before noon, I hope.

1 Judging from this hearing, I may be here until midnight
2 tomorrow night, too.

3 MR. LILLEY: The government indicates that it is
4 mandatory, and I'm not -- I don't have the means to respond
5 right now whether I agree with them or don't agree with them.
6 I know it is a restitution issue, obviously. So the court has
7 90 days to make a determination on -- I would advise to put it
8 off and the government -- it might be something I agree with.

9 THE COURT: All right. Well, I would like to avoid
10 filing a judgment and then having to file an amended judgment,
11 so --

12 MR. SALTMAN: Your Honor, I believe the court's giving
13 the government 90 days anyway to try to obtain some sort of
14 verification of Karen Lesinsky's losses.

15 THE COURT: Well, if you find a statute that says
16 prejudgment interest is mandatory, then what I'll need for you
17 to do is come up with a schedule of calculation of prejudgment
18 interest for each of the different victims.

19 MR. SALTMAN: Okay, yes, sir.

20 Additionally, Your Honor, the government would ask that
21 the following language be included into the judgment: That the
22 United States Probation Office, after the defendant completes
23 any term of supervised release the court imposes, the United
24 States Attorney's Office for the District of New Mexico may
25 revise the monthly payment amount depending on the defendant's

1 financial circumstances, and that no later than July 1st of
2 each year until restitution is paid in full the defendant shall
3 provide to the financial litigation unit of the United States
4 Attorney's Office in Albuquerque, New Mexico, a financial
5 statement and also a copy of the defendant's most recent tax
6 returns.

7 I understand that the court has ordered the defendant
8 to pay restitution in full by the time his supervised release
9 runs, but if that doesn't happen, we would ask the court,
10 especially ask the court to include that language from the
11 judgment.

12 THE COURT: Why haven't you done it before right now?

13 Has probation heard anything about this?

14 MR. RODRIGUEZ: No, Your Honor.

15 THE COURT: Probation prepares the sentencing scripts.

16 MR. SALTMAN: I understand, Your Honor. I didn't have
17 this conversation with the probation officer, but in speaking
18 with the financial litigation unit, this is language that's
19 not -- that it hasn't been routinely requested in restitution
20 judgments, but it is something that the government is, I guess,
21 going to start asking for to be included in judgments.

22 THE COURT: Let's do it this way. Why don't you file a
23 motion asking that that language be included, and Mr. Lilley
24 can respond to it, and I'll make a decision later.

25 MR. SALTMAN: Okay.

1 THE COURT: Sounds like we're going to file an amended
2 judgment come hell or high water.

3 MR. SALTMAN: I think that's all I have.

4 THE COURT: Okay. Anything else?

5 MR. SALTMAN: Not from the government, no.

6 MR. LILLEY: Judge, my only response to your proposed
7 sentence, obviously, I'm on record on my other objections, was
8 the payment of the \$82,000 right away, I know that was in the
9 script, Judge, but we don't have \$82,000 to pay.

10 THE COURT: I didn't think you did, but that's part of
11 the order, so do the best you can.

12 MR. LILLEY: Yes, sir.

13 THE COURT: Is there any reason why the sentence as I
14 pronounced it should not be imposed at this time?

15 MR. SALTMAN: No, Your Honor.

16 MR. LILLEY: Judge, all my objections have been
17 previously noted.

18 THE COURT: It is my order, then, that the sentence as
19 I stated it will be the sentence imposed in Number 2010-130.
20 We'll be in recess for about three minutes before we take up
21 the last matter.

22 MR. LILLEY: I'll check downstairs. If I can't locate
23 anybody from the Marshals Office downstairs, then I'll make
24 sure that we come back first thing in the morning.

25 THE COURT: Meet with the marshals?

1 MR. LILLEY: Yes, sir. On the self-surrender.

2 THE COURT: Thank you very much. Court's in recess.

3 MR. SALTMAN: Judge, I'm sorry. There is one other
4 thing, Your Honor.

5 THE COURT: Okay.

6 MR. SALTMAN: Because the court is allowing the
7 defendant to voluntarily surrender, the defendant -- the
8 government is asking that the court modify his conditions of
9 release.

10 THE COURT: I don't think he has any conditions of
11 release as best I can tell.

12 MR. SALTMAN: No, Your Honor. He was released OR, so
13 the government is asking the court at this time to impose
14 conditions of release, namely, that the defendant be prohibited
15 from incurring new credit card charges, opening additional
16 lines of credit, or negotiating or consummating any financial
17 contracts without prior approval of the probation office.

18 THE COURT: Is there any objection to that, Mr. Lilley?

19 MR. LILLEY: No, sir, we have no objection to that.

20 THE COURT: That will be a condition of release, and we
21 need to advise him how to report to whom.

22 MR. LILLEY: I will, Judge. U.S. Marshals will give us
23 a notice of where and when we surrender.

24 THE COURT: That's not what I'm talking about. I'm
25 talking about conditions before he reports to serve his

1 sentence.

2 MR. LILLEY: I thought the only condition was he just
3 didn't incur any -- if he does, to report it.

4 THE COURT: He's got to report to a probation officer
5 to know who it is that he's talking to.

6 MR. LILLEY: Okay.

7 THE COURT: If he wants to open a line of credit, he's
8 got to go to that probation officer to get approval of it.

9 MR. LILLEY: I'll find out from Mr. Rodriguez who we
10 need to report to.

11 MR. RODRIGUEZ: We would ask for the record that
12 tomorrow he report to the pretrial office here on the first
13 floor, and they will be expecting him. We will also ask that
14 being this is done in open court, if AUSA could file a motion
15 with those additional conditions with pretrial.

16 THE COURT: Would you do that?

17 MR. SALTMAN: Yes, sir.

18 THE COURT: Okay. We'll be in recess for three
19 minutes.

20 (Court recessed at 6:41 p.m.)

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2 UNITED STATES OF AMERICA

3 DISTRICT OF NEW MEXICO

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5 I, John De La Rosa, RPR, CCR, Official Court Reporter for
6 the State of New Mexico, do hereby certify that the foregoing
7 pages constitute a true transcript of proceedings had before
8 the said Court held in the City of Albuquerque, New Mexico, in
9 the matter therein stated.

10 In testimony whereof, I have hereunto set my hand on this
11 6th day of April, 2015.

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JOHN DE LA ROSA, CCR
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Phone: 505.348.2249

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